

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

NOTICE OF MOTION NO.1820 OF 2006

IN

APPEAL (L) NO.191 OF 2006

AND

APPEAL (L) NO.191 OF 2006

...

Mascot Developers & ors. ...Appellants

v/s.

Dr.Natwarlal Dayashankar Joshi

and ors. ...Respondents

...

Mrs.Lambay i/b Lambay & Co. for the Appellants.

Mr.Pritish Jaiswal i/b Kanga & Co. for Respondents

Nos.8, 11 to 28.

...

CORAM: D.K.DESHMUKH &

J.H.BHATIA, JJ.

DATED: 19TH JULY, 2007

P.C.:

1. Assuming that there is sufficient cause shown for condonation of delay in filing this Appeal, we heard the learned Counsel appearing for the Appellant on merits.

2. The Appeal is filed against the order passed by the learned single Judge in chamber summons declining to grant permission to the Plaintiff to amend the plaint. By that chamber summons the Plaintiff wanted to add 21 persons as Defendants to the suit on the allegation that during the pendency of the suit the Defendant No.7 has created third party rights and they have been created in favour of the proposed Defendants. The learned single Judge found that assuming that third party rights in favour of the proposed Defendants have been created they are not necessary parties to the suit and the interest of the Plaintiff can be protected by the Plaintiff by registering the lis pendence and rejected the Application for permission to amend the plaint.

3. By the order impugned no issue is finally decided

by the learned single Judge, the order passed by the learned single Judge on the chamber summons would not amount to a judgment for the purpose of Clause 15 of the Letters Patent, in view of the law laid down by the Supreme Court in the case of Shah Babulal Khimji v/s. Jayaben D. Kania and anr, (1981) 4 SCC 8. Perusal of paragraph 120 of that judgment shows that only an order granting leave to amend the plaint introducing a new cause of action which alters the nature of the suit or takes away vested right of limitation or any other valuable right accrued to the Defendant amounts to judgment and only an order refusing to add necessary party in a suit under Section 92 of the C.P.C. amounts to a judgment.

4. Thus the Appeal itself is not maintainable considering the nature of the order. We also find, even on merits, the learned single Judge was justified in declining permission to amend the plaint by holding that interest of the Plaintiff can be safeguarded by registering lis pendence. We find no substance in the Appeal. Motion & Appeal are, therefore, disposed of.

(D.K.DESHMUKH, J.)

(J.H.BHATIA, J.)